

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 94-664-T - ORDER NO. 95-1580 ✓
OCTOBER 3, 1995

IN RE: Request of The Great American Trolley) ORDER
Co., Inc., 350 Wesley Street, Suite 904,) APPROVING
Myrtle Beach, SC 29577 (Mailing Address) APPLICATION
- 821 Shunpike Road, North Cape May, NJ)
08204), to Amend Class A Certificate)
No. 1269.)

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the Application of The Great American Trolley Company, Inc. ("Great American" or "the Applicant") to amend its Class A Certificate of Public Convenience and Necessity No. 1269 ("the Certificate"). Great American's Class A Certificate currently reads as follows:

BETWEEN CITY OF NORTH MYRTLE BEACH, S.C. AND MYRTLE BEACH, S.C. VIA U.S. HIGHWAY 17, BUSINESS 17 AND OCEAN BOULEVARD.

RESTRICTED: TO 51 PASSENGERS.

The Application proposes to amend the Certificate to read as follows:

BETWEEN CITY OF NORTH MYRTLE BEACH, S.C. AND MYRTLE BEACH, S.C. VIA U.S. HIGHWAY 17, BUSINESS 17 AND OCEAN BOULEVARD.

FROM THE INTERSECTION OF 21ST AVENUE SOUTH AND OCEAN BOULEVARD TO THE INTERSECTION OF 21ST AVENUE NORTH AND BYPASS HIGHWAY 17 VIA 21ST AVENUE.

FROM THE INTERSECTION OF 21ST AVENUE NORTH AND BYPASS HIGHWAY 17 TO THE INTERSECTION OF BYPASS HIGHWAY 17 AND HIGHWAY 501 WEST VIA BYPASS HIGHWAY 17.

FROM THE INTERSECTION OF HIGHWAY 501 WEST AND BYPASS HIGHWAY 17 TO GEORGE BISHOP PARKWAY/WACCAMAW IN HORRY COUNTY VIA HIGHWAY 501 WEST.

RETURN ALONG SAME ROUTE TO 21ST AVENUE NORTH.

RESTRICTED: TO 51 PASSENGERS.

The Application was filed pursuant to S.C. Code Ann. §58-23-40 (1976).

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the area affected by the Application. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceedings of the manner and time in which to file the appropriate pleadings for inclusion in the case. The Notice of Filing was duly published in accordance with the instructions of the Executive Director. A Petition to Intervene was timely filed by Coastal Rapid Public Transit Authority ("CRPTA"). Due to an error in the Notice of Filing (and succeeding Notice of Hearing), a revised Notice of Filing and Hearing was published in newspapers of general circulation in the area affected by the Application. No additional Protests or Petitions to Intervene were received by the Commission.

A public hearing was convened on August 17, 1995, in the hearing room at the offices of the Commission located at 111

Doctors Circle, Columbia, South Carolina. The hearing was concluded on August 22 , 1995. The Honorable Rudolph Mitchell, Chairman, presided. Great American was represented by L. Sidney Connor, IV, Esquire; CRPTA was represented by Emma Ruth Brittain, Esquire; and the Commission Staff was represented by Florence P. Belser, Staff Counsel.

Witnesses presented were Greg Marsi for the Applicant, and Elvin Tobin, Jerome Noble, J.R. Taylor, Sheldon Crum, Tom Jones, and Bobby Pearson for CRPTA.

Greg Marsi, Director of Operations of Great American, provided testimony relative to the Applicant's current and proposed operations and its ability and willingness to provide the services for which authority is sought herein. Great American is a Delaware corporation which provides passenger transportation services in Myrtle Beach, South Carolina; Philadelphia, Pennsylvania; and several cities, which are primarily resort areas, in New Jersey. Great American presently operates in Myrtle Beach pursuant to a franchise agreement with the City of Myrtle Beach and pursuant to two Commission approved routes in the Myrtle Beach/Horry County area.

Mr. Marsi explained and described the growth and development in the Myrtle Beach and surrounding area. According to witness Marsi, the Myrtle Beach area is experiencing enormous development of new entertainment facilities and tourist attractions. A great deal of this development is occurring in an area of Myrtle Beach known as "Broadway at the Beach" and in the area around Waccamaw

Pottery, which is located just west of the Intracoastal Waterway. The present application would expand Great American's currently approved routes in Myrtle Beach and would allow Great American to transport passengers from its approved routes east of the Intracoastal Waterway to the Waccamaw Pottery shopping area.

Great American uses trolley buses in providing its transportation services. According to Great American's presentation, it primarily seeks to serve the tourist industry in the Myrtle Beach area.

CRPTA presented several lay witnesses and two expert witnesses. Elvin Tobin, Executive Director of CRPTA, testified regarding CRPTA's provision of service in Horry County. According to Mr. Tobin, CRPTA provides year round service and meets ADA requirements. Mr. Tobin stated that CRPTA meets the demand for service in the area and that granting Great American's Application would adversely affect CRPTA's level of service throughout CRPTA's service area.

CRPTA also presented the testimony of Jerome Noble, Deputy Director of Mass Transit with the South Carolina Department of Transportation. Mr. Noble testified that CRPTA is in compliance with State requirements and that, in his opinion, CRPTA is meeting the public demand in the area. J.R. Taylor, Chairman of the Board of CRPTA, testified that CRPTA was formed to serve the public purpose by providing public transportation services in Horry County and that CRPTA strives to continue to meet that goal. Bobby Pearson, Executive Director of the Waccamaw Economic

Opportunity Council, testified that many of his clients use CRPTA for daily travel and that a reduction in CRPTA's services would greatly affect his clients.

CRPTA also sponsored the testimony of Sheldon Crum. Mr. Crum is a transportation planner with CGA Consulting Services, Inc. in Columbia, South Carolina. Mr. Crum testified as an expert in transportation planning and presented a report based on a survey of CRPTA riders. According to Mr. Crum's presentation, the existing CRPTA routes "pretty much" cover the entire area. Mr. Crum also offered his opinion that the proposed route would be a duplication of an existing CRPTA route and that approval of the route would divert riders and revenues from CRPTA which would detrimentally impact CRPTA and its riders.

Tom Jones, a transportation consultant, also testified as an expert witness. Mr. Jones testified that, in his opinion, CRPTA is meeting the public convenience and necessity in the area and that granting the Application of Great American would be detrimental to the public interest.

APPLICABLE LAW

1. S.C. Code Ann. §58-23-220 (1976) provides as follows:

The Commission may grant a certificate A in the following cases:

(1) To an applicant to operate in territory already served by any certificate holder under this chapter or any common carrier when the public convenience and necessity in such territory are not already being reasonably served by some other certificate holder or common carrier, provided such applicant purposes to operate on a fixed schedule and to comply with the other provisions contained in Articles 1 to 11 of this chapter and the rules and regulations which may be made

by the Commission respecting holders of this class of certificates; and

(2) To an applicant for a certificate to operate upon a regular schedule in a territory not already served by the holder of a certificate A, when public convenience and necessity in such territory are not being reasonably served by a certificate holder under this chapter or a common carrier; provided, that when such a certificate A is issued to an applicant over territory which is being served at the time such certificate is granted by the holder of a certificate B, the right of such applicant to operate under certificate A shall not begin until the expiration of the then license year of the holder of the certificate B and the holder of a certificate B shall be preferred in granting a certificate A over such route unless in the judgment of the Commission it would not be in the interest of the public service.

In either such case the existence of a railroad or other motor vehicle carrier in the territory sought to be served by the applicant shall not be considered by the Commission as good cause for refusing the application.

2. S.C. Code Ann. §58-23-330 (Supp. 1994) contains the grounds for issuance or denial of a certificate and provides, in relevant part, that:

[a]n applicant applying for a certificate or to amend a certificate to operate as a motor vehicle common carrier may be approved upon a showing based on criteria established by the commission that the applicant is fit, willing, and able to perform appropriately the proposed service. If an intervenor shows or if the commission determines that the public convenience and necessity is being served already, the commission may deny the application. ...

3. 26 S.C. Code Ann. Regs. 103-133(1) (as amended in S.C. Reg. Vol. 19, No. 5, published May 26, 1995) sets forth the proof required to justify approving an application and states as follows:

1. For Common Carriers Applying for a Certificate of PC&N. An application for a Certificate of PC&N or

to amend a Certificate of PC&N to operate as a carrier by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service, provided however, if an intervenor shows or if the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the Applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T., SCDHPT and PSC safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agrees to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

4. "The doctrine of [public] convenience and necessity is a relative or elastic theory. The facts in each case must be separately considered and from those facts it must be determined

whether public convenience and necessity requires a given service to be performed or dispensed with." State v. Carolina Coach Company, 260 N.C. 43, 53, 132 S.E.2d 249, 255 (1963).

5. "'Necessity' means reasonably necessary and not absolutely imperative." Id. citing State v. Southern Railway Co., 254 N.C. 73, 79, 118 S.E.2d 21, 25 (1961). "...It is necessary if it appears reasonably requisite, is suited to and tends to promote the accommodation of the public." Id.

6. "In the phrase 'public convenience and necessity' the word 'necessity' means that which is needful, essential, requisite or conducive to 'public convenience.' When more convenient and adequate service is offered to the public, it would seem that necessity requires such public convenience should be served." Atlantic Greyhound Corporation v. Commonwealth of Virginia, 196 Va. 183, 193, 83 S.E.2d 379, 384 (1954).

7. The South Carolina Supreme Court has held that while an intervenor's testimony that its business will be adversely affected by the increased competition produced by an increased number of motor carriers is relevant, such testimony "is not determinative and 'should not in itself defeat an application for additional service'." Welch Moving and Storage Co. v. Public Service Commission, 301 S.C. 259, 391 S.E.2d 556, 557 (1990), citing Greyhound Lines, Inc. v. South Carolina Public Service Commission, 274 S.C. 161, 166, 262 S.E.2d 18, 21 (1980).

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the

following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Great American is a Delaware corporation which is currently operating over Commission approved routes in the Myrtle Beach area and which is fit, willing and able to perform the proposed services.

2. As relating to this Application, the Commission finds that the public convenience and necessity are not already being served by existing services in the area.

CONCLUSIONS OF LAW

1. Great American has demonstrated that it is fit, willing, and able to provide the Class A services for which it seeks authority. Specifically, Great American has established that it is "fit" by showing that it has no outstanding judgments pending against it, by certifying that it is familiar with the statutes and regulations governing for-hire motor carrier operations in South Carolina and by further certifying that it will operate in compliance with these statutes and regulations. Great American has shown "ableness" by establishing that it has the equipment necessary to provide the services for which it seeks authority and that it has insurance which meets the Commission's requirements. (Testimony of Marsi and the Application.) Great American's "willingness" to provide Class A services in South Carolina is manifested by the submission of the Application. Additionally, this Commission has previously found Great American fit, willing, and able to provide motor carrier passenger service. See,

Commission Order No. 94-523 (June 7, 1994), issued in Docket No. 94-216-T and Commission Order No. 95-839 (April 10, 1995) issued in Docket No. 94-467-T.

2. Based on the evidence of record, the Commission concludes that the public convenience and necessity would be better served by approval of the Application. Although witnesses for the Intervenor CRPTA testified that CRPTA would be adversely affected by approval of the Application, not one witness could quantify how much CRPTA would be affected. While the Commission is cognizant that CRPTA is concerned that Great American's expansion in the Myrtle Beach area will adversely affect existing business, the Commission concludes that regarding the Application presently under consideration, the public convenience and necessity outweigh CRPTA's concern.

Additionally, while the witnesses for CRPTA testified that the Application duplicated a route that CRPTA currently serves, the evidence shows that CRPTA does not operate the exact same route. To reach the Waccamaw Pottery from the Broadway at the Beach using the CRPTA service, one must take a bus to a transfer area (Myrtle Square Mall) and transfer to another bus to travel to Waccamaw Pottery. Great American proposes a route that is more direct. The Commission believes and concludes that such a route is in the public interest and will serve the public convenience and necessity. To this end, the Commission therefore concludes that the public convenience and necessity are not already being served by existing service.

MISCELLANEOUS MATTERS

1. During the course of the hearing, the parties made timely objections to the introduction of certain evidence and testimony. The Commission noted on the record of the hearing that these objections would be ruled upon in the Commission Order. These evidentiary objections are discussed below.

(a) CRPTA objected to the introduction of Hearing Exhibit No. 1 which is the franchise agreement between the City of Myrtle Beach and Great American. The basis of CRPTA's objection is that the franchise agreement is not fully executed in that it is not signed by a representative from Great American. Counsel for Great American asserts that the lack of signature is a mere technical deficiency. The Commission agrees that the lack of the signature is a technical deficiency that should not result in the exclusion of the document. Mr. Marsi of Great American testified that Great American is operating under the franchise agreement and that the franchise agreement has in fact been signed by Richard Adelizzi, President of Great American. Additionally, CRPTA, at the end of the hearing, requested that Great American provide the Attachment referenced in the franchise agreement. Great American has complied with CRPTA's request and has filed the attachment with the Commission. The Commission therefore overrules CRPTA's objection and accepts the franchise agreement between the City of Myrtle Beach and Great American into evidence as Hearing Exhibit No. 1.

(b) Great American objects to CRPTA's cross examination of

Mr. Marsi concerning a "gentlemen's agreement" among the City of Myrtle Beach, CRPTA, and Great American. Great American objects that such agreement falls under the realm of settlement negotiations. CRPTA states that the "gentlemen's agreement" was not a part of settlement negotiations. The Commission believes that the questions regarding the "gentlemen's agreement" were proper cross examination and will allow the questions and answers to stand.

(c) CRPTA objects to the admission of Hearing Exhibit No. 10 which is the survey conducted by Great American. CRPTA objects on the grounds (1) that the witness was not qualified as an expert in either transportation planning or statistics and (2) that CRPTA had just received the report and did not have the opportunity to rebut the survey in their testimony. Great American argues that it would be unfair to admit the study from CRPTA and not allow the study of Great American. Further, Great American offers that CRPTA's study was not made available until the morning of the first day of the hearing. The Commission finds and concludes that the Great American study should be admitted as Hearing Exhibit No. 10 and overrules CRPTA's objection. The Commission believes that the Great American study is relevant and material, and the Commission will afford the study the weight in its deliberations as the Commission deems appropriate.

2. At the conclusion of the hearing, Great American made a motion to consolidate the pending CRPTA Application with all outstanding Great American Applications. Great American requested

that the all of these pending Applications be heard together on October 26, 1995, which is the date currently set for the hearing on the CRPTA Application. The Commission has considered Great American's motion and concludes that the motion should be denied. The Commission believes that consolidation of all of these dockets would create confusion and would unduly complicate the proceedings.

IT IS THEREFORE ORDERED THAT:

1. The Application of Great American to amend its Class A Certificate of Public Convenience and Necessity No. 1269 as set forth above is hereby approved.

2. CRPTA's objection to the admission of Hearing Exhibit No. 1 into evidence is overruled.

3. Great American's objection to the cross examination regarding the "gentlemen's agreement" is overruled.

4. CRPTA's objection to the admission of Hearing Exhibit No. 10 is overruled.

5. Great American's motion to consolidate the pending CRPTA Application and the pending Great American Applications into one hearing is denied.

6. Great American shall comply with all applicable statutes and regulations regarding for-hire transportation in South Carolina.

7. Great American shall file the proper license fees and other information required by S.C. Code Ann. §58-23-10 to §58-23-1830 (1976, as amended) and by 26 S.C. Regs 103-100 to

103-272 (1976, as amended) within sixty (60) days of the date of this Order or within such additional time as may be authorized by the Commission.

8. Upon compliance with S.C. Code Ann. §58-23-10 to §58-23-1830 (1976, as amended), and the applicable provisions of 26 S.C. Regs. 103-100 to 103-272 (1976, as amended), a certificate shall be issued herein to Great American authorizing the motor carrier services granted herein.

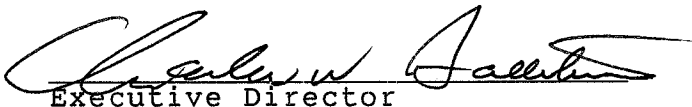
9. Prior to compliance with the above-noted requirements and receipt of a certificate, the motor carrier services authorized herein may not be provided.

10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)